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REVIEW ON JUSTICE K PUTTASWAMY VS UNION OF INDIA & ORS [2017]

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Abstract

In our Indian constitution, certain rights are recognised as fundamental rights. In the case of puttaswamy vs union of India, right to privacy recognized as fundamental right and integral part of article 21. Some of the acts and provisions also introduced to confer the right to privacy. The country like india put forth the individual right over the other things. So that right to privacy was recognized as fundamental right.

Key words – Right to privacy , article 21 , prevention of privacy , fundamental right , digital era.

Introduction

India is a democratic country . Nowadays , indian legislation and judiciary system are move forward towards the positive law which emphasis the individualism . This guarantees fundamental rights, freedom, liberty and equality to the individuals. In indian constitution part 3 [article 12 – 35] deals with the fundamental rights of indian citizens. In the following case , right to privacy was recognized as fundamental right.

Definition

Right to privacy includes the right to be free from unwanted publicity, the right to be alone , the right to lead a peaceful and dignified life.

International aspect

- ✓ The resolution on the promotion and protection of human rights on the internet was passed by united nations.
- ✓ Human rights council affirmed, “ that the same rights that people have online must also be protected online ”.
- ✓ In september 2019, the resolution on right to privacy in the digital age was adopted by human rights commission.
- ✓ The 24th human rights council meeting discussion was focused on the protection of right to privacy in the digital era.

- ✓ Article 12 of universal declaration of human rights

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

- ✓ Article 17 of international covenant on civil and political rights

no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

India is a *signatory party* to be both conventions.

Judicial interpretation

Right to privacy is not expressly described in Indian constitution. Right to privacy was inserted by indian constitution by the judicial interpretation.

Right to privacy has multiple dimensions like political , religious and social.

Puttaswamy vs Union of India

Case number :

Wp (c) 494 / 2012

Facts

Constitution had not defined and recognised the right to privacy as fundamental right. The subsequent decisions of the court recognises the right to privacy as fundamental right. This case was filed by justice ks puttaswamy, he is a retired judge of Karnataka. In this case, he challenged the aadhar card scheme, where the aadhar project linked the several welfare schemes to remove false beneficiaries. He questioned that the aadhar card collects the biometric data on the ground of violation of right to privacy.

Bench

1. Chandrachud j
2. Abdul nazeer j
3. Rohinton nariman j
4. Sk kaul j
5. Js khehar cji
6. Shared bobde cji
7. Jasti chelameswar j
8. Abhay sapre j
9. Ak sikri j

Issue involved in this case

1. In this case the question was raised whether right to privacy is fundamental right or not?
2. Whether the aadhar scheme which collects the biometric information is valid or not?

The main issue of this case was whether the right to privacy was a fundamental right under part iii of the constitution of india.

The court discussed about the positive and negative effects of right to privacy. This case also emphasis the importance of enacting new law and act for the regulation of right to privacy.

In this case the supreme court overruled the following case's judgement:-

Mp sharma vs satish chandra

In this case, petitioner argued that the police's search and seizures without reason breached

their fundamental right. This case's judgement limits the basic rights. The court held that right to privacy is not fundamental right.

Judgement

After referring all the cases the supreme court held that right to privacy is part of fundamental right. Article 21 of Indian constitution which guarantees the right to life also includes the right to privacy. In this case Supreme Court noted the need of data protection law in India. The court also held that Aadhar card policy is valid for the state interest.

Consequence of this judgement

Right to abortion

Medical termination of pregnancy act was introduced to prevent the most number of abortions.

After the recognition of right to privacy, so many cases were filed to claim their right to abortion under right to privacy.

Relevant laws

Information Technology Act

Information technology act was introduced in 2000. This act was introduced to protect right to privacy which was guaranteed under article 21 by supreme court.

Section 1

This act extends to whole india including Jammu and Kashmir.

Section 43a

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

Section 48

(1) the telecom disputes settlement and appellate tribunal established under section 14 of the telecom regulatory authority of India act, 1997 (24 of 1997), shall, on and from the commencement of part xiv of chapter vi of the finance act, 2017 (7 of 2017), be the appellate tribunal for the purposes of this act and the said appellate tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this act.

(2) the central government shall specify, by notification the matters and places in relation to which the appellate tribunal may exercise jurisdiction.

Section 52 a

The chairperson of the cyber appellate tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that tribunal and he shall, in addition to presiding over the meetings of the tribunal, exercise and discharge such powers and functions of the tribunal as may be prescribed.

Section 66 e

Punishment for violation of privacy

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

(a) “transmit” means to electronically send a visual image with the intent that it be viewed by a person or persons;

(b) “capture”, with respect to an image, means to videotape, photograph, film or record by any means;

(c) “private area” means the naked or undergarment clad genitals, public area, buttocks or female breast;

(d) “publishes” means reproduction in the printed or electronic form and making it available for public;

(e) “under circumstances violating privacy” means circumstances in which a person can have a reasonable expectation that –

(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

Section 67 c

Preservation and retention of information by intermediary

- Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe.
- Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine.

Section 72 a

Any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

**Indian penal code , 1860***Section 354 c*

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished.

Data protection bill , 2023

Nowadays , people are using digital devices such as mobile phone and other electronic devices. Personal data protection bill was introduced in 2018 by justice srikrishna committee.

This bill protects the private interest of the people and right to privacy.

Conclusion

Every individual can exercise their rights that should not affect others. This right to privacy make every individual to take their own decision and life choices without the interference from state and non state actors . The diversity country like India, privacy is one of the most important rights. These laws and provisions protects the right to privacy in India.

